



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 13, 1993

Mr. Randel B. Gibbs  
Ms. Paula C. Martucci  
Law Offices of Earl Luna, P.C.  
4411 Central Building  
4411 N. Central Expressway  
Dallas, Texas 75205

OR93-556

Dear Mr. Gibbs and Ms. Martucci:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code.<sup>1</sup> Your request was assigned ID# 20499.

The Richardson Independent School District (the "school district") has received a request for "an incident report involving parents who allegedly caused injury to a teacher." The school district contends the requested information is excepted from public disclosure under sections 552.101, 552.102 and 552.114 of the Open Records Act ("the act").

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You claim the information is made confidential by V.T.C.S. article 8308-2.31(a), which provides that

[i]nformation in or derived from a claim file regarding an employee  
is confidential and may not be disclosed by the [Workers'

---

<sup>1</sup>We note that V.T.C.S. article 6252-17a was repealed by the 73d Legislature. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

*Compensation] commission* except as provided by this Act.  
[Emphasis added.]

Article 8308-2.31(a) makes confidential "information in or derived from a claim file" and prohibits the commission from releasing such information, except as provided by the Texas Workers' Compensation Act, V.T.C.S. article 8308-1.01 *et seq.* The exceptions to this prohibition on the release of information in or derived from an employee's claim file are not pertinent here.<sup>2</sup> Thus, we must determine whether article 8308-2.31(a) prohibits the school district from releasing the requested information.

Article 8308-2.31(a) states that claim file information "may not be disclosed *by the commission.*" This statement is an express limitation on the application of the provision to the commission. Consequently, this provision does not govern the release of information by an entity other than the commission; another provision governs the release of information by entities who have obtained information from the commission under the Workers' Compensation Act. *See* V.T.C.S. art. 83.08-2.36. Moreover, this provision does not govern the release of information that is not in or derived from a claim file. Therefore, since article 8308-2.31(a) prohibits the commission from releasing information in or derived from an employee's claim file, that provision does not govern the release of information by an entity other than the commission or the release of information that is not in or derived from a claim file.

You say the requested report, "Richardson Independent School District First Report of Injury" is "used for worker's [*sic*] compensation purposes." The report indicates that it was completed by the injured employee's supervisor and returned to the Personnel Services Office of the school district. Thus, the school district did not obtain the report from a claim file of the commission, but generated the report itself. Since the requested information is a record created by the school district and is held by the school district in its own right, it is not "information in or derived from a claim file" of the commission. You do not say whether a claim under the Workers' Compensation Act has

---

<sup>2</sup>Several provisions in the Workers' Compensation Act permit the release of information. Article 8308-2.31(b) provides that information concerning an employee who has been finally adjudicated of wrongfully obtaining payment under section 10.04 of the Workers' Compensation Act or section 32.51 of the Penal Code is not confidential. Article 8308-2.31(c) permits the commission to release a record check on an employee in certain situations to certain individuals listed in subsection (d) of that provision. Article 8308-2.32 (a) permits the commission to release claim information to a governmental agency, political subdivision, or regulatory body for certain purposes. Article 8308-2.32 (b) permits the commission to release claim information to other named entities for certain purposes. Article 8308-2.33, subject to the limitations of article 8308-2.34, permits the commission to release information about prior injuries of job applicants to prospective employers who have workers' compensation insurance coverage. Finally, article 8308-2.38 permits the commission, a research center or any other governmental agency to release statistical information, if the employees' identities are protected. Article 8308-2.37 provides that a person who knowingly, intentionally, or recklessly discloses information confidential under Chapter C of the Workers' Compensation Act to a person not authorized to receive such information directly from the commission commits a Class A misdemeanor.

been filed in this case or whether the school district has or will furnish the requested report to the commission. But regardless of whether the school district furnishes the report to the commission or whether the report becomes a part of a claim file in the future, article 8303-2.31 does not apply to information an entity possesses in its own right. Accordingly, you may not withhold the requested information under section 552.101 in conjunction with V.T.C.S. article 8308-2.31(a). Cf. Open Records Decision No. 533 (1989) (confidentiality provision in section 9a of V.T.C.S. article. 8307, predecessor statute of V.T.C.S. article. 8308-2.31, applies only to those documents maintained or received from the Industrial Accident Board not to documents a governmental body possesses in its own right).

You also raise article 8308-2.36, which provides as follows:

Any information relating to a claim that is confidential under this Act remains confidential when released to any person, except when used in court for the purposes of an appeal. This subsection does not prohibit an employer from releasing information about a former employee to another employer with whom the employee has made application for employment, if that information was lawfully acquired by the employer releasing the information.

This provision means that when claim information made confidential under the Workers' Compensation Act is transferred to individuals or entities authorized by that act to obtain it, such information retains its confidential character. Article 8308-2.36, therefore, prohibits the release of information by an individual or entity that has acquired the information from the commission. However, as we determined above, the Workers' Compensation Act does not render confidential information, such as the report at issue here, that is held by another entity that has not obtained the information from the commission. Thus, since the Workers' Compensation Act does not make the requested report confidential, article 8308-2.36 does not prohibit the school district from releasing it.

Section 552.102 excepts

information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy . . . .

Section 552.102 protects personnel file information only if its release would cause an invasion of privacy under the test articulated for common-law privacy under section 552.101. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). The Texas Supreme Court has stated that information is within the common-law right to privacy if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

*Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W. 2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977).

The requested information does not contain "highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person." The injury is not of an intimate nature. Accordingly, you may not withhold the information under section 552.102.<sup>3</sup>

Section 552.114 of the act excepts "a student record at an educational institution funded wholly or partly by state revenue." Section 552.026 of the act, which incorporates the Family Educational Rights and Privacy Act of 1974 ("FERPA"), into the Open Records Act, provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

Gov't Code § 552.026; *see also* Open Records Decision No. 431 (1985). FERPA provides the following:

No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of educational records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) . . . ) of students without the written consent of their parents to any individual, agency, or organization.

20 U.S.C. § 1232g(b)(1). "Education records" are records which:

---

<sup>3</sup>In *Hubert*, the court distinguished the information at issue there, names of candidates for the office of president of a university, from the information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation of the South*, i.e., information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d at 551. As in the *Hubert* case, the information at issue here is clearly distinguishable from the "intimate and embarrassing" information at issue in *Industrial Foundation of the South*.

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

*Id.* § 1232g(a)(4)(A). The requested document is an "education record" for purposes of FERPA. However, sections 552.114 and 552.026 may not be used to withhold entire documents; the school district must delete information only to the extent "reasonable and necessary to avoid personally identifying a particular student" or "one or both parents of such a student." Open Records Decision No. 332 (1982) at 3. Thus, only information identifying or tending to identify students or their parents must be withheld from required public disclosure. The document contains the names of the three witnesses to the accident who are students. Accordingly, under FERPA, you must redact the names of the witnesses unless the parents authorize their release.<sup>4</sup> 20 U.S.C. § 1232g(b)(1).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Kay Guajardo  
Assistant Attorney General  
Open Government Section

KHG/rho

Ref.: ID# 20499

cc: Mr. Jeffrey G. Atkins  
Fanning, Harper & Martinson  
Preston Commons West, Third Floor  
8117 Preston Road  
Dallas, Texas 75225  
(w/o enclosures)

---

<sup>4</sup>We note that the request letter is from the legal representative of the parents involved in the incident and that both parents have authorized the release of any information pertaining to the incident. Accordingly, any information that identifies the parents involved or their child may be released under FERPA.